

OFFICE OF THE GOVERNOR
STATE OF MONTANA

BRIAN SCHWEITZER
GOVERNOR



JOHN BOHLINGER
LT. GOVERNOR

March 24, 2008

Name
Address
City, State ZIP

Dear:

During the past year, much has been said and written about the Two Rivers Detention Center (facility) in Hardin. Community leaders and Texas developers met with me and my staff last fall seeking inmates for the facility. I was in Miles City, Baker, Ekalaka and Broadus meeting with folks about the new state back up computer center, coal development and other issues of concern to eastern Montana on Tuesday, March 11 when a delegation visited the Capitol and met with my staff and representatives of the Department of Corrections (DOC) about the facility. The group delivered signed petitions inviting me and members of my Administration on a tour of the facility and I look forward to visiting sometime in the next several weeks.

Accompanying the petitions was a letter from the Executive Director of the Two Rivers Authority and the Mayors of Hardin and Lodge Grass. The point of the letter was, "We don't want a handout, we want a helping hand." Before discussing how best I might be able to help, I first need to clear up some issues.

It has been said that the state of Montana committed to providing inmates to the facility during Governor Martz's Administration and that I reneged on that commitment.

The fact is that no commitment was ever made by the State of Montana to the facility. No contracts were ever signed between the state and the facility. Further, the facility did not respond to a project issued for competitive bid in January, 2006 by the DOC for 120 beds through the state's "Request for Proposal" (RFP) process. Finally, the facility did not respond to a "Sources Sought Notice" for 96 secure beds in Montana by the U. S. Marshall's Service in 2005. According to Bill Slaughter, who served as Director of the DOC under Governor Judy Martz and during the first year and a half of my Administration, in testimony before the Corrections Advisory Council on February 12, 2008, "We didn't sign any contracts with this group; there are no e-mails or promises. I don't know what to tell you. I was actually surprised they were under construction."

It has been said that as Governor, I can send Montana prisoners needed to open the facility.

Two facts relate to this issue. First, we do not have prisoners to send to the facility. Community corrections policies that the Legislature enacted and I have implemented are reducing the number of locked-up non-violent inmates with cost savings to taxpayers and increased public safety. Please see the enclosed March 9, 2008, *Billings Gazette* editorial recognizing the success of these policies.

Second, all community corrections services authorized by the Legislature require DOC to obtain those services through the competitive RFP process I mentioned earlier. This competitive process,

outlined in detail by Director Mike Ferriter to the folks from Hardin on March 11, helps ensure that corrections professionals, not politicians, make the critical decisions on the criminals sentenced to the jurisdiction of the DOC. It also helps ensure that the taxpayers are protected against the misuse of their money. Selecting the facility to perform community corrections services without going through the competitive process would be against the law.

It has been said that as Governor, I can bring in out-of-state prisoners to open the facility.

The fact is state law does not allow a “detention center” (a fancy name in Montana law for a county jail) such as the facility in Hardin to house out-of-state inmates. Your own city attorney requested an Attorney General opinion on this issue. Attorney General Mike McGrath, who is elected by the people of Montana, issued an opinion on December 3, 2007 affirming that housing out-of-state prisoners in a detention facility is against the law. That opinion is being challenged in court by the City of Hardin and the Two Rivers Authority. Until and unless the court overturns the Attorney General’s opinion, it is legally binding on me as Governor as well as on all state government.

It has been said that as Governor, I should have told you to stop the project after you started it with no contracts for prisoners.

The fact is according to the Executive Director of the Two Rivers Authority your local government built a “detention center.” Contrary to the opinion expressed by one member of the delegation here last week, legally it does make a big difference what you built. Unlike prisons, the state isn’t involved in building “detention centers.” Those are local decisions. I don’t know a sheriff, police chief or county commissioner in Montana who wants the state Corrections Department, let alone the Governor, to start telling them about building county jails. DOC legal counsel Diana Koch explained the important distinction between prisons and jails to the March 11 delegation as reported in the March 12, 2008 *Big Horn County News*, “We understood you were building a detention center, which is in essence a county jail. We thought you were going to contract with your county, with other counties and communities, maybe even with the Bureau of Indian Affairs.”

It has been said that economic development in eastern Montana is not a priority of mine.

In fact, I have instructed my economic development staff and the various state departments involved in economic development to tilt their efforts in economic development to areas “outside the boot”- predominately eastern Montana counties and areas on or near Indian Reservations. They have followed that directive and, as a result, we are focused on projects that represent the best chance to secure economic development in eastern Montana through oil & gas development, increased coal production, energy projects that range from wind to advanced clean coal technologies, connectivity and technology advancements such as the new state backup data center in Miles City and renewable technologies like Sustainable Systems (formerly Montola) in Culbertson.

Projects specific to the Big Horn County, Hardin and Crow Nation area:

- We worked with Hardin local development officials on a wind turbine manufacturing facility and service facility prospect. In fact, we put Hardin on the short list for the project.
- We supported with infrastructure improvement in the area, as well, including a Montana Coal Board grant in the amount of \$61,709 to the Big Horn County Hospital for roof repairs (the amount was later increased to \$85,555), and a Montana Coal Board grant to Big Horn County \$200,000 for repairs to the Sarpy Creek Road.
- We recommended and the Legislature approved infrastructure improvements assisting the Crow Tribe, including:

- a \$750,000 Treasure State Endowment Program (TSEP) grant to the Tribe to assist in the construction of a new wastewater treatment lagoon,
- a \$500,000 TSEP grant to the Tribe to build a new sewer interceptor, two lift stations, and sewer laterals in Crow Agency,
- We also supported a Montana Coal Board grant in the amount of \$60,000 to the Crow Tribe for the completion of a preliminary Engineering report for Phases 3 and 4 of its master plan to improve water and wastewater systems in Crow Agency.
- My Department of Environmental Quality (DEQ) has worked with Westmoreland Resources, Inc. (WRI) and the Crow Tribe on the permitting process for a portion of the Tract III Coal Lease north of the Crow Reservation (for which the Crow Tribe owns the mineral rights), which would help the Absaloka Coal Mine to continue to operate well into the future.
- We remain committed and have spent substantial time and effort in support of the planned ethanol facility to be located near the new power plant.

You have asked me for a helping hand. Following are some alternatives the facility, by law, can pursue.

First, the facility can respond to RFP's issued by DOC. Montana's Jessica's Law, which I signed into law after passage by the 2007 Legislature, calls for establishment of a low risk sex offender treatment center of 116 beds. The DOC anticipates releasing the RFP this summer and expects the selected facility to be operational in early 2009. Also, I believe that the 2009 Legislature will consider proposals for further community corrections programs.

Second, the facility can negotiate with other detention centers in Montana to house prisoners.

Third, early last week I was briefed by the U. S. Department of Interior/Bureau of Indian Affairs on conversations they are having with Crow Tribal Chairman Carl Venne about use of the facility. I look forward to working with you and Chairman Venne to fully explore this alternative.

I know that emotions are running high on this issue in Hardin. I suggest the best way to make progress is to take your city attorney's advice, as reported in the *Billings Gazette* on Wednesday, March 12, 2008, to stop pointing fingers and try to find some ways to use the facility.

Sincerely,



BRIAN SCHWEITZER
Governor

Enclosure